

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

VUZIX CORPORATION,

Plaintiff,

– against –

RICARDO ANTONIO PEARSON a/k/a
RICHARD PEARSON,

Defendant.

Case No. 1:19-cv-00689-NRB

**DECLARATION OF RICHARD J. PEARSON IN
SUPPORT OF MOTION TO DISMISS**

RICHARD J. PEARSON, declares pursuant to 28 U.S.C. § 1746 and under penalty of perjury as follows:

1. My name is Richard J. Pearson. I am over the age of 18, and I have personal knowledge of the facts stated in this declaration. If called to testify, I would testify competently about the facts set forth herein.

Domicile in California

2. I am a private investor based in Los Angeles, California. I graduated from the University of Southern California in Los Angeles in 1997, with a degree in finance. Between 1997 and 2005, I was an investment banker for Deutsche Bank, stationed at various times in Hong Kong, London, and New York. I moved back to Los Angeles in 2005. Since 2005, I have spent the majority of my time between Los Angeles and China. I have not lived in New York since 2005.

3. I currently live in Los Angeles, California. I have continuously maintained the same mailing address in the Marina del Rey area of Los Angeles since 2008.

4. I am self-employed, and my investing activities are based out of California and use my California mailing address.

5. I frequently travel internationally, but I am a tax resident of California and have continuously maintained a mailing address in Los Angeles. I treat California as my home, and when I travel, I intend to return to California. I currently have no intention of living in any U.S. state other than California.

6. I do not own real property in any U.S. state, but I rent property in California, including residential space, office space, and storage space. I do not rent property in any state other than California.

7. All of my U.S. personal property is located in California (aside, of course, from any personal property I take with me when I travel).

8. I maintain a California driver's license, and I do not have a driver's license in any other state. I last renewed my California driver's license in 2016, replacing an earlier driver's license, which was also a California driver's license. During this time, I have not had a driver's license from any state other than California.

9. My only automobile is registered in California, and has been registered in California since I purchased it in 2015. My current vehicle replaced an earlier vehicle, which had also been purchased in and registered in California. I renewed my California vehicle registration in 2018, and it is currently valid. I do not own any vehicles located in or registered in any other state.

10. Except when I travel, I conduct my in-person banking business in the Los Angeles branches of my banks. I frequently visit these branches in person and the bankers and tellers recognize me by face and by name.

11. For at least the past five years, I have filed tax returns to the State of California and to no other state. I have already filed my 2018 income taxes with the State of California and the

IRS. On my California tax returns, I list my California mailing address, and any tax-related correspondence from California comes to that address.

12. On my federal income tax returns to the IRS, I list my California mailing address. Any tax-related correspondence or refunds from the IRS comes to that California address.

13. When I submit whistleblower reports to federal law enforcement and regulatory agencies, I list my California mailing address and my California phone number. When federal law enforcement reaches out to me to discuss my whistleblower reports, they contact me using these same California contact details.

14. I conduct business and financial transactions within and based out of California. I am frequently contacted by investors who read my reports online, and I regularly meet with them in person in Los Angeles. When I conduct business in person, I present business cards, which show the name of my California-based website along with my California phone number.

15. My primary care and any regularly seen specialist physicians, such as optometrist, chiropractor, and acupuncturist, are located in California.

16. For at least five years, I have maintained my paid memberships at the same recreational clubs, including my health club and my sailing club, which are based in Los Angeles.

17. My current cell phone has a California area code, replacing an earlier cell phone number from 2017, which also had a California area code.

18. The only utility bills I pay are in California. I have not paid utility bills in any other state in at least five years.

19. At all relevant times, my website included a biography that included an email address on which I can be reached. My *Seeking Alpha* contributor profile states that I “spend[] [my] time living between Los Angeles and Beijing, China.”

Lack of Contact with New York

20. I do not currently reside in New York and have not resided in New York since 2005.

21. I do not live at 191 Broadway, Dobbs Ferry, New York. I have never lived at this address, and I do not know anyone who lives at this address. I also do not and have not lived at the following addresses: 3024 Kingsbridge Avenue, Bronx, NY; 14 Wainwright Avenue, Yonkers, NY; or 28 Whitman Street, Hastings on the Hudson, NY. I do not know anyone who lives at these addresses.

22. I do not do or solicit business in New York. Therefore, I do not derive revenue from services rendered in New York.

23. I do not engage in any persistent course of business or personal conduct in New York.

My Experience and Public Recognition within the Media as a Financial Analyst

24. I publish investment analyses about publicly traded companies that are based in the United States and China. Since 2012, I have been publishing these analyses on my website, Moxreports.com. In the past, my content has also been re-published—including the content at issue in this litigation—on the financial website *Seeking Alpha*. I have published hundreds of articles during this time, and I have thousands of regular followers on my website and my Twitter account, which links to my website.

24. My handle on Twitter is @Moxreports. I am frequently contacted by investors and journalists who use Twitter's direct message feature or the contact form on my website Moxreports.com.

25. My reports contain my professional investment opinions about publicly traded companies, typically where I have invested my own money. My reports include very detailed

analysis and explanation for my investment views or decisions. My investment positions may be either long or short positions, depending on the conclusions I had reached from my analysis. I disclose my investment position at the time I publish my reports, and the views expressed in my reports are consistent with my investment positions.

26. Major financial publications including *Barron's*, *Reuters*, and *Bloomberg*, among others, have recognized me by name (“Richard Pearson” and “Rick Pearson”) for my published financial analyses, including significant recognition for the work I have done to expose fraudulent stock promotions. Mainstream media have mentioned my name in specific connection to my reports about Sichenzia clients and have frequently referred to my biographical details, including my career history and my location in Los Angeles.

27. When I publish or Tweet online, my reports and opinions are frequently picked up within minutes by mainstream financial news outlets including Bloomberg and CNBC. These financial news services refer to me by name and frequently mention my location in Los Angeles. I am regularly contacted by journalists from financial media who quote me on my opinions and analysis.

28. When I attended the 2019 Consumer Electronics Show in Las Vegas, I was given verified media credentials based on the analysis I have published on my website. The credentials given to me by CES identify me as Richard Pearson, Industry Analyst for Moxreports in Marina del Rey, California. CES’s registration procedures require that these credentials be verified in person, including showing my driver’s license. Copies of my credentials are attached as Exhibit A

My Financial Analysis, Including Past Analysis of Past Clients of Sichenzia and IRTH

29. During 2016 and 2017 the SEC announced the filing of federal fraud charges against more than 40 firms and individuals in connection with fraudulent stock promotions that

had earlier been publicly warned about by me in my reports. A number of these also involved criminal cases announced by the Department of Justice published on Moxreports. In addition, there have been many more instances of delistings, accounting restatements, and fraud investigations that came about after concerns I had publicly expressed in my reports. The share prices of many of these companies eventually fell by 80-100%, which is consistent with the views I had expressed in my original reports.

30. Many of these companies I have written about have been clients of the same small group of law firms, “investor relations” firms, and investment banks that Vuzix uses, including Sichenzia, IRTH Communications, and/or Chardan Capital.

31. Each of Sichenzia, IRTH, and Chardan had represented Vuzix during the time of the activities that I had warned about in my Vuzix Report.

32. In my Vuzix Report, I included two very detailed full-page exhibits explaining that my fraud concerns with Vuzix were significantly based on the fact that Vuzix was displaying identical promotional tactics as I had observed in those past reports regarding clients of Sichenzia, IRTH, and/or Chardan Capital. I included the titles for my past reports as well as references to independent media articles that confirmed the law enforcement actions against these companies that had unfolded subsequent to my warnings. I also included data to show that the share prices of these companies often fell by 80-100% when the stock promotions ultimately unraveled.

33. These full-page exhibits on pages 26-27 of the Vuzix Report included Forcefield Energy, Northwest Biotherapeutics, and Unilife, among others. Each of these companies were clients of or had a close relationship with Vuzix’s legal counsel Sichenzia Ross Ference LLP, which is representing Vuzix in this matter.

34. For Forcefield energy, Sichenzia partners Greg Sichenzia and Jay Yamomoto had

a close enough relationship with the Chairman that they rang the NASDAQ closing bell with him.

35. Several days after I published my report warning about Forcefield Energy, the Chairman was arrested by the FBI, and the stock was delisted. Ten people were later indicted on federal fraud charges. Press releases from the DOJ later revealed that Forcefield Energy had already been under investigation months or years prior to my report.

36. Prior to my reports warning about potential fraud at Northwest Biotherapeutics and Unilife, Sichenzia had served as law firm for these companies around their equity offerings allowing them to sell shares during the promotions that I later warned about. Following my warnings about these companies, shares of both companies were later delisted from the NASDAQ and fell by 95-100%, and the companies or their executives faced fraud charges or investigations, in line with the concerns I had expressed.

37. At the time this matter was filed in April 2018, Sichenzia was still known as Sichenzia Ross Ference Kesner LLP. Partner Harvey Kesner resigned in August 2018, several days before fraud charges were announced by the SEC against 10 individuals and 10 associated entities in connection with fraudulent stock promotions involving Sichenzia clients. Various allegations laid out by the SEC in that case are largely in line with the types of fraudulent promotion activities that I have expressed in my past reports, including the concerns expressed about past Sichenzia clients, and were largely similar to the concerns that I expressed in this Vuzix Report.

38. The name of that SEC case was *SEC vs. Honig et al.* Barry Honig has at times been one of Sichenzia's larger individual clients and has been a significant investor in dozens of public companies advised by Sichenzia.

39. In September of 2016, Mr. Honig had called my California cell phone number

threatening to sue me over online articles that were critical of his involvement in certain microcap stocks including Chromadex. Mr. Honig was represented at that time by Perrie Weiner of DLA Piper. Sichenzia was the legal counsel who had provided the legal opinion relating to the validity of the issuance and sale of the securities in equity offerings by Chromadex. I was unaware of where Mr. Honig had obtained my number. I later changed that phone number as well as my phone carrier, selecting a new California phone number.

40. In January 2018, I began receiving aggressive email threats from an individual who had been associated with Sichenzia's former client Northwest Biotherapeutics. Two weeks later, in February 2018, Mr. Honig called my new California phone number to confront me about negative articles about him, which he said he thought were about to be published online.

41. I had not heard from Mr. Honig since that earlier 2016 phone call, and I was unaware of how Mr. Honig had obtained my new phone number at that time.

42. Several weeks after the February call from Mr. Honig, around March 2018, a series of articles did begin appearing online that were critical of Mr. Honig and the companies in which he invests. I was not involved in publishing any of those articles. Prior to the call from Mr. Honig in February 2018, I had not been aware that such articles were about to be published. The companies or other individuals mentioned in those articles included many of the same companies or individuals who were later named by the SEC in *SEC vs. Honig* in September 2018.

43. It was as a result of the threats against me in January 2018 that I noticed the latest promotional activity behind Vuzix, which had occurred in conjunction with CES that same month. I had been passively gathering research on Vuzix and other related companies for at least two years.

The Vuzix Report

44. On March 16, 2018, I published a 27-page report on my website MoxReports.com about Vuzix (the “Vuzix Report”). A true and correct copy of the Vuzix Report is attached as Exhibit B.

45. I researched the Vuzix Report in California and first published it on MoxReports.com, my California-based website.

46. The Vuzix Report explained in detail my analysis, which concluded that Vuzix and its “investor relations” firm IRTH Communications appeared to be engaged in a fraudulent stock promotion scheme that touted contrived associations with recognized technology giants to artificially inflate Vuzix’s share price, and that as a result, Vuzix’s stock was likely to plummet in value from those artificial highs.

47. My report shows the text of six warning signs as written by the SEC and then provides detailed evidence and examples to show how the activities around Vuzix match not just “any” but in fact ALL of the SEC’s six warning signs of fraud. A true and correct copy of the SEC’s Investor Alert displaying the six signs of fraud is attached as Exhibit C.

48. As is consistent with my past practices, prior to publicly releasing my report on Vuzix in March of 2018, I filed a formal whistleblower report detailing my fraud concerns to the SEC. Consistent with my past practices, I provided the SEC with my California address and phone number.

49. On or about March 20, 2018, the Vuzix Report was re-published on *Seeking Alpha*, a New York-based Internet publication, along with a short summary introduction of the Vuzix Report. A true and correct copy of the summary published on *Seeking Alpha* is attached as Exhibit D.

50. Seeking Alpha did not pay me to re-publish the Vuzix Report.

51. After the republication, *Seeking Alpha* made certain deletions to the Vuzix Report that I did not authorize or agree with and added commentary that I did not agree with.

52. My Vuzix Report focused on two large equity offerings conducted by Vuzix in December 2017 and January 2018. For both of these offerings, Sichenzia had been the legal counsel, IRTH had been the “investor relations” firm, and Chardan Capital had been the investment bank.

53. In my Vuzix Report, I made multiple references to my past reports on Forcefield Energy, Northwest Biotherapeutics, and Unilife. I included the title of those past reports on my website as well as the titles of media articles that detailed the federal fraud charges or actions that came out subsequent to the publication of my reports. I also included data that showed that subsequent to my warnings about those companies, the share prices fell, sometimes by 95-100%.

54. Some of the statements at issue in the Amended Complaint concern Vuzix’s “Blade” product and the positive media coverage that product received between January 2018 and March 2018. Subsequent to my publication of the Vuzix Report in March 2018, a number of these same media outlets published negative or cautious comments about the “Blade,” which were consistent with my criticism in 2018. The journalists in 2019 used terms such as “preproduction version,” “first generation,” “a phone accessory,” as well as describing significant functionality shortcomings with basic features like taking photos or sound. True and correct copies of those reviews are attached as Exhibits E, F, and G.

No Attempt to Serve Me

55. On or around April 5, 2018, Vuzix filed a lawsuit against someone named Ricardo Antonio Pearson. From the New York State court docket, I understand that Vuzix missed the

August deadline for serving the complaint. I am not aware of any attempts to serve me with the complaint in this matter prior to the August deadline. I understand that on November 30, 2018, Vuzix sought permission from the court to serve me with the complaint against someone named “Ricardo Antonio” via Seeking Alpha and via my email addresses, which I have publicly disclosed for many years.

56. I am not Ricardo Antonio Pearson. The name Richard J. Pearson is my true legal name and is not an alias. At all times in my professional career, I have been identified as Richard Pearson or more informally as Rick Pearson. My bylines on my website *Moxreports.com* and on *Seeking Alpha* state that my name is Richard Pearson. My email address is rick.pearson@pearsoninvestment.com. My name is not—and never has been—Ricardo Antonio Pearson.

57. Until 2017, I occasionally used a very private Facebook page to communicate only with a small number of close friends and family. This private Facebook page included references to comical nicknames for me used only among close friends and family. These nicknames included “Ricardo,” “Rico Suave,” and “Uncle Rico,” among others. The satirical meanings of these nicknames are well known and can be found on websites such as UrbanDictionary.com. I have never used any of these satirical nicknames in any professional or legal environment or context. Although my account was set to private, people who added my friends and family as their own Facebook friends would have been able to see some of the content on my private Facebook page.

58. Although I have changed my phone number and even phone carrier multiple times, individuals associated with the Sichenzia law firm or their clients have had no trouble contacting me by phone or in person.

59. In October of 2018, I had registered to attend the 11th Annual LD Microcap

conference near Santa Monica, California, which was scheduled to begin on December 4, 2018. The conference is heavily attended in person by many clients of IRTH and/or Sichenzia, including both Cemtrex, Vuzix, and other companies that I have written about in my reports. The LD Micro conference is held just a few miles from IRTH's headquarters in Santa Monica.

60. I have been a regular attendee of the LD Micro conference for several years. I register for the LD Micro conference well in advance under the name Rick Pearson, using my same email address rick.pearson@pearsoninvestment.com. I attended the LD Micro conference in person in December of 2018, and was recognized by face and by name by the conference organizer. While at the conference, I wore my name badge, which prominently displayed my name as Rick Pearson.

61. The New York State Court docket shows that Vuzix was granted the right to serve me by email effective as of December 4, 2018. However, I am not aware of any effort made by Vuzix to serve me during the LD Micro conference or any other efforts made for the remainder of 2018.

62. In January of 2019, I attended the Consumer Electronics Show ("CES") in Las Vegas. CES gave me a Media Pass recognizing me as Richard Pearson, an Industry Analyst for Moxreports from Marina del Rey, CA. In giving me this pass, CES verified my biographical and career details from my website, from my social media, from press articles, from my business cards and from my driver's license. Registration for CES required my Media Pass to be picked up in person in a special area designated for Media, where my credentials were again verified before giving me my badge.

63. On January 3rd, just days before I was scheduled to attend CES, Vuzix finally served me with the complaint against "Ricardo Antonio" via email to the email addresses that I have been

publicly displaying for many years. The emails were sent to me at rick.pearson@pearsoninvestment.com and info@moxreports.com.

64. Both Vuzix and Centrex were scheduled to present in person at CES. It was widely known that I would also be attending the CES conference as a member of the media. As required by CES, while attending the conference, I displayed my media badge, which lists me as Richard Pearson, an Industry Analyst for Moxreports from Marina del Rey, CA.

Vuzix Repeats the Same Tactics to Silence Me as Centrex in 2017

65. In February 2017, I published a report on Centrex, Inc., expressing my concerns about fraudulent stock promotions and undisclosed share sales by Centrex insiders.¹ My report was published on my site Moxreports.com and subsequently republished on Seeking Alpha.

66. In my Centrex report, the concerns I expressed and the analysis on which those concerns were based were consistent with numerous past reports I had published where share prices had fallen dramatically when the subject companies or individuals were later indicted or investigated in federal securities fraud cases.

67. Consistent with my past practice, prior to releasing my Centrex report to the public, I filed a whistleblower report with the SEC, detailing my concerns about fraudulent activity around Centrex. Similar reports filed by me in the past were later followed by federal fraud indictments against dozens of firms and individuals mentioned in those reports, including multiple companies and individuals with close business ties to the Sichenzia law firm.

68. In the two years since my report, Centrex has fallen by approximately 90% and has received a NASDAQ delisting notice.

¹ A copy of that report is available at <https://moxreports.com/cetx/> and <https://seekingalpha.com/article/4048274-centrex-documents-photos-signs-point-deception-failure>.

69. Following my report on Centrex, the company issued a press release stating that “*Centrex Files \$170 Million Lawsuit against Richard Pearson, Seeking Alpha author, and Others for Trade Libel.*” However, the suit that Centrex actually filed in court was against someone named “Ricardo Antonio Pearson.”

70. The suit *Centrex, Inc. v. Ricardo Antonio Pearson*, Case No. 2:17-cv-01258-JS-AKT (E.D.N.Y.) was filed for Centrex by its law firm Olshan Frome, where Harvey Kesner had formerly been a partner from 2004 to 2006.

71. At the time the suit was filed, Centrex and Olshan knew that I live in Los Angeles. Shortly after filing the suit, Olshan partner Thomas Fleming gave an interview to Newsday.com, which then wrote: “Thomas Fleming, an attorney at Olshan Frome Wolosky LLP, the Manhattan law firm that filed the lawsuit on behalf of Centrex, said that Pearson is believed to be in Santa Monica, California.” The article where Fleming is quoted is available at <https://www.newsday.com/business/centrex-files-170m-libel-suit-against-financial-blogger-1.13217824>.

72. However in the actual lawsuit, Centrex stated that “Ricardo Antonio” lives in Alameda, CA, which is more than 300 miles from Santa Monica.

73. My name is not Ricardo Antonio Pearson, and I have never lived in Alameda, California.

74. My name is Richard Pearson, and I live in Los Angeles, California, a few miles from Santa Monica.

75. Centrex and its law firm Olshan Frome knew who I was, my professional background as an activist investor, and how to contact me.

76. On May 31, 2017, Jake Noone, a law clerk from Olshan Frome, contacted me by

email under the pretense of seeking employment from me. In that email, Noone said to me: “I hope this message finds you well. My name is Jake Noone and I am currently a Law Clerk at the leading law firm in representing activist investors, Olshan Frome Wolosky LLP...[] . To make a long story short, I am looking to work for an activist fund and I thought I would reach out to you since you have been extremely influential in the space.” A true and correct copy of the email is attached as Exhibit H.

77. I exchanged phone numbers with Mr. Noone, and we then spoke by phone for more than 30 minutes. I took that phone call from my Los Angeles phone number and from my office in Los Angeles, and I informed the Olshan clerk of my location. The Olshan clerk made no mention of any lawsuit against anyone.

78. On June 5, 2017, five days after I was contacted by email and phone, Centrex filed to dismiss the “Ricardo” suit, stating in federal court: *“Despite making seven attempts, Centrex has been unable to serve defendant Ricardo Antonio Pearson within the 90 day time limit set forth in Rule 4(m). Given the uncertainty of successful service and the significant expenditure of time and money additional attempts at service will involve, Centrex wishes to focus its resources on defending the related putative securities class action litigation resulting from Pearson's false accusations. Centrex anticipates that it will prevail in the securities litigation, and reserves the right to re-file its claims against Pearson at that time.”* See Exhibit I.

79. I was never served with the Complaint in the Centrex matter, and I am not aware of any attempt to serve me in that matter.

80. At the time of his email to me, the information on Jake Noone’s LinkedIn page was consistent with the information he had stated to me in his email. Subsequent to leaving Olshan Frome, Jake Noone is now a Vice President with an “investor relations” firm called ICR, which

has offices in New York and Santa Monica. Mr. Noone's bio on ICR's website states that "Jake develops and executes strategic communications plans for clients related to shareholder activism, IPOs, mergers and acquisitions, Chapter 11 bankruptcies, short selling, executive transitions, and regulatory investigations."

81. Consistent with the concerns I had expressed in my Centrex report, in the 23 months since that time, the shares have declined by approximately 90%, from over \$5.00 to approximately 50 cents. In January 2019, Centrex received a delisting notice from the Nasdaq stock exchange.

82. Following the dismissal of the lawsuit *Centrex, Inc. v. Ricardo Antonio Pearson*, I deleted pictures, comments, and links to friends and family on my Facebook page so as to avoid further intrusions into my personal life—including the harassment detailed above.

83. In or around June of 2018, Joshua Mitts, an assistant professor at Columbia University, published an academic paper titled "Short and Distort," which he later made revisions in several different versions. The abstract of this report stated that "Pseudonymous attacks on public companies are followed by stock price declines and sharp reversals. I find these patterns are likely driven by manipulative stock options trading by pseudonymous authors." Professor Mitts' paper discloses that "The author consults on regulatory and litigation matters related to short-and-distort campaigns." As of August 17, 2018, Professor Mitt's "Short and Distort" paper continued to contain the sentence: "And three lawyers at DLA Piper recently discussed the cases of Chromadex Inc., which was attacked by a pseudonymous short seller and lost \$100 million of market capitalization in a single day, and Centrex, which attempted to sue the pseudonym 'Richard Pearson' but failed for lack of service of process." See <https://www.ivey.uwo.ca/cmsmedia/3782601/joshua-mitts.pdf>.

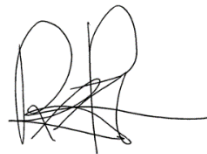
84. In October 2018, subsequent to the filing of *SEC vs. Honig*, Professor Mitts republished a revised version of his “Short and Distort” paper that had deleted all references to me and to the phrase “the pseudonym Richard Pearson.” Professor Mitts did not publicly announce that these deletions had been made. Richard Pearson is my real name and not pseudonym, and I believe that this fact is well known.

85. Centrex and its management have close ties to Vuzix and its management by way of Santa Monica-based IRTH Communications, which both companies use for their “investor relations” activities. Both of my reports on Centrex and Vuzix cited the involvement of IRTH as one of the key reasons that I was concerned about fraudulent stock promotion. In addition to working for Centrex and Vuzix, IRTH founder Andrew Haag has worked closely with Vuzix’s law firm Sichenzia for more than 10 years, including with multiple companies or individuals charged with involvement in fraudulent stock promotions.

86. During 2019, I have respectfully reached out by phone or in person to many of the people involved with the stocks mentioned here in hopes of getting harassment against me to stop. This includes Barry Honig, Perrie Weiner, Andrew Haag, Robert Haag, David Zazoff, and Steven Angel, among others.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 27th day of March, 2019

A handwritten signature in black ink, appearing to be 'RJ Pearson', written over a horizontal line.

RICHARD J. PEARSON

Dated: March 27, 2019
Los Angeles, California